

EXHIBIT A, PART 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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MYRICK TANTIADO, an individual,)
)
Plaintiff,)
vs.) Case No. C07-02874
) CRB MED
POWER MEDICAL INTERVENTIONS, a)
Pennsylvania corporation, and)
DOES ONE through FIFTY,)
inclusive,)
)
Defendants.)
)

CERTIFIED COPY

DEPOSITION OF
MYRICK TANTIADO

April 10, 2008

REPORTED BY: CAROLYN M. MANN, CSR 10066 [#408119]

M E R R I L L L E G A L S O L U T I O N S

135 Main Street, 4th Floor
San Francisco, CA 94105

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MYRICK TANTIADO

April 10, 2008

--oOo--

Deposition of MYRICK TANTIADO, taken by the
Defendant at 900 Front Street, San Francisco,
California, commencing at 10:18 a.m. on April 10, 2008,
before CAROLYN M. MANN, CSR, pursuant to Notice.

--oOo--

A P P E A R A N C E S

FOR THE PLAINTIFF:

MOSCONE, EMBLIDGE & QUADRA LLP
220 Montgomery Street, Suite 2100
San Francisco, California 94104
BY: MARK L. MOSLEY

FOR THE DEFENDANT:

FOLEY HOAG LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210
BY: JOHN EARL DUKE

--oOo--

1 Q. So your understanding of a net sale at the
2 time you started working for PMI was that a net sale was
3 essentially whatever a net sale was according to
4 industry practice?

5 A. I believe so.

6 Q. Yes or no?

7 MR. MOSLEY: Well, he answered it.

8 You can answer it again. You don't have to
9 change your answer to a yes or a no if "I believe so" is
10 the best answer you can give.

11 MR. DUKE: Q. Did you have any reason to
12 believe that that was not going to be the case?

13 A. I don't think so.

14 Q. And when you started working for PMI you were
15 entitled to be reimbursed for expenses as outlined in
16 PMI's employee handbook, right?

17 A. I believe so.

18 Q. Did you ask anybody what that meant?

19 A. What what meant? Can you . . . ?

20 Q. What, for example -- did you ask anyone what
21 expenses you'd be reimbursed for?

22 A. I don't recall whether I asked anyone
23 specifically, or if that was presented to me during a
24 meeting, a new hire meeting or sales training. I
25 believe that when we were hired, when I was hired, there

1 Q. Going back a little bit, before you accepted
2 PMI's offer of employment, did you negotiate with PMI
3 over the terms of the offer?

4 A. I don't recall whether I did negotiate or did
5 not.

6 Q. Did PMI, prior to your acceptance, offer to
7 sweeten the terms of the offer?

8 A. I don't recall whether they wanted to sweeten
9 the terms of the offer.

10 Q. Did you receive any other job offers around
11 the time that you accepted employment with PMI?

12 A. I don't remember.

13 Q. Were you applying for positions with other
14 employers around the time you were applying to PMI?

15 A. I may have, but I don't remember.

16 Q. Had you interviewed with any other companies
17 around the time that you were applying for a position
18 with PMI?

19 A. I may have, but I don't remember.

20 Q. When did you start working at PMI?

21 A. I believe it was July of 2004.

22 Q. What was your job title?

23 A. I believe I was territory manager. I'm not
24 certain if that was the exact title. It could have been
25 senior sales associate, or --

1 Q. Could you look --

2 A. -- sales associate.

3 Q. Could you look back at Exhibit 3, which is the
4 offer letter. Does that refresh your recollection as to
5 what your job title was when you started working for
6 PMI?

7 A. Let's see.

8 Q. Specifically directing you to the first
9 paragraph.

10 A. Yes.

11 Q. What was your job title?

12 A. According to this, I was sales associate.

13 Q. You said that refreshed your recollection,
14 correct? As to your job title.

15 A. It refreshes my recollection of my job title.

16 Q. And so based on your recollection, what was
17 your job title when you first started working at PMI?

18 A. After having looked at this document, my job
19 title was sales associate when I started with the
20 company.

21 Q. When you started working for PMI, who did you
22 report to?

23 A. Rob Chase.

24 Q. What was his job title?

25 A. According to that document, his job title was

1 general manager.

2 Q. Based on your recollection, what was his job
3 title?

4 A. Based on my recollection after having looked
5 at that document, his title was general manager.

6 Q. Did you report directly to anyone else at PMI
7 other than Rob Chase?

8 A. No.

9 Q. After you started working for PMI, PMI sent
10 you a copy of its employee handbook, correct?

11 A. I believe so.

12 MR. DUKE: Could you mark this as Exhibit 7,
13 please.

14 (Deposition Exhibit 7 was marked for
15 identification.)

16 THE WITNESS: Thank you.

17 MR. DUKE: Q. Do you recognize this document?

18 A. Yes.

19 Q. Is this the letter that enclosed the employee
20 handbook?

21 A. Yes, it is.

22 Q. You received the employee handbook, correct?

23 A. I believe I did.

24 MR. DUKE: Could you mark this as Exhibit 8,
25 please.

1 Q. We'll move on.

2 A. -- or is there a question?

3 Q. Yeah, there was a question. We'll move on.

4 It's fine.

5 After you started working at PMI, what did you
6 understand your duties to be?

7 A. To increase sales in my territory of the
8 SurgAssist stapler.

9 Q. And I believe you testified that before -- and
10 correct me if I'm wrong -- at this time, the SurgAssist
11 stapling product or line of products was the only thing
12 that PMI sold?

13 A. At the time of employment, the stapling
14 products that I had described were the only products
15 that we had sold. But after my employment, we had added
16 other stapling product lines within that family of
17 SurgAssist products.

18 Q. Did you receive any training?

19 A. Yes.

20 Q. What did the -- of what did the training
21 consist?

22 A. I believe the training at Power Medical
23 Interventions was primarily on the product lines and how
24 they interfaced with various types of surgeries, the
25 advantages of using the product in various types of

1 the part where a product does not work and was used in
2 surgery, and then we have to return -- so I was, I
3 misunderstood what you meant by product return, because
4 I was thinking that you were meaning product returned
5 after a surgeon had used the product, it was in the
6 patient, it did not work, and then we had to send it
7 back as faulty, as a faulty product. But you're
8 referring to, now that you're asking this question, I
9 think you're referring to if the customer wants to send
10 product back that was not used? Is that what you're
11 referring to?

12 Q. Let's talk about both. Let's talk about how
13 you handle product returns in the situation where the
14 product's been used. What's the procedure for that?

15 A. So if a surgeon uses this product and it fails
16 to work within the, within the surgery, within surgery,
17 I would fill out an ICR report stating what had happened
18 within that procedure and submit that to quality
19 assurance within Power Medical Interventions, copy my
20 immediate supervisor, and send the product back in a
21 biohazardous containment package. Then the product
22 would be evaluated to determine what was at fault, and I
23 would receive a response back to determine whether we
24 were taking action to fix the product, or it would
25 explain what we were doing, and I would provide that

1 letter to the surgeon. So that, that's a product return
2 after the product malfunctioned during a procedure.

3 Q. And how would you handle a product return
4 where the product had not been used in a procedure?

5 A. I have never had any product returns while I
6 was employed with Power Medical Interventions, so I
7 don't know how to answer that question.

8 MR. MOSLEY: You want to find a good breaking
9 spot for lunch?

10 MR. DUKE: In a bit.

11 Q. Was Novato Hospital a PMI account in your
12 territory?

13 A. Novato Community Hospital, correct.

14 Q. You sold Novato Community Hospital one of
15 PMI's products called an RALC-30, right?

16 A. I may have.

17 Q. What is an RALC-30?

18 A. Right angle linear cutter, 30-millimeter.

19 Q. Do you recall that after making a sale of the
20 RALC-30 to Novato Community Hospital, the hospital
21 realized that it ordered the wrong product?

22 A. I vaguely remember that.

23 Q. And Novato hospital then returned the product
24 that it ordered incorrectly to PMI, correct?

25 A. I vaguely remember that.

1 form. Okay.

2 Q. And it also contains a section on PMI's return
3 policy, correct?

4 A. Yes. I just turned to that section.

5 Q. Are these slides that you received in a
6 training session with PMI?

7 A. I believe they may have been slides. I don't
8 recall specifically if they were slides or if this was
9 part of my training manual.

10 Q. Oh, okay. The section of this exhibit dealing
11 with product returns, does it accurately reflect the
12 training that you received at PMI regarding how to
13 handle product returns?

14 A. Yes. I believe so.

15 Q. Did you also receive training on PMI's expense
16 reimbursement policy?

17 A. I may have. I don't specifically recall if we
18 had training on, you know, on that.

19 MR. DUKE: Can you mark this as Exhibit 15,
20 please.

21 (Deposition Exhibit 15 was marked for
22 identification.)

23 THE WITNESS: Thank you.

24 MR. DUKE: Q. Do you recognize this document?

25 A. Yes.

1 please.

2 (Deposition Exhibit 16 was marked for
3 identification.)

4 THE WITNESS: Thanks.

5 MR. DUKE: Q. Does this document refresh your
6 recollection as to whether you received a 60-day
7 performance review?

8 A. Yes.

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. And this is a review by Rob Chase of your
12 performance during the first 60 days of your employment
13 with PMI?

14 A. Yes.

15 Q. Did you consider this to be a positive review?

16 A. Yes.

17 MR. DUKE: Mark this as Exhibit 17, please.

18 (Deposition Exhibit 17 was marked for
19 identification.)

20 THE WITNESS: Thank you.

21 MR. DUKE: Q. Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. An e-mail exchange. Excuse me.

25 Q. And you wrote this e-mail, correct?

1 California. Actually, excuse me. I believe there was
2 someone in Southern California as well. I just don't
3 remember his name.

4 Q. Okay. So this award is for the entire region
5 of California?

6 A. I believe so.

7 Q. Shortly after receiving this award, were you
8 promoted?

9 A. I don't recall the exact time frame when I was
10 promoted, from when I received this reward, award to
11 when I was actually promoted. So, but I was promoted, I
12 just don't know how -- the time frame.

13 Q. Okay. So at some point you were promoted,
14 though, right?

15 A. Yes.

16 Q. And you were promoted from a sales associate
17 to a senior sales associate; is that correct?

18 A. I believe so. I don't even know if that was
19 even presented to me. I think it just was implied after
20 a certain amount of time had passed. So I don't recall
21 any, any formal notification of receiving a promotion
22 from sales associate to senior sales associate.

23 MR. DUKE: Could you mark this as Exhibit 19,
24 please.

25 (Deposition Exhibit 19 was marked for

1 identification.)

2 THE WITNESS: Thank you.

3 MR. MOSLEY: Do you have a copy for me?

4 MR. DUKE: Oh, of course.

5 Q. Do you recognize this document?

6 A. I -- it looks familiar.

7 Q. What is it?

8 A. This is a promotion from sales associate to
9 senior sales associate.

10 Q. And this letter also informs you that as of
11 January 1st, 2005, that's when you'll be a senior sales
12 associate, right?

13 A. Based on this letter, correct.

14 Q. Or January 3rd, rather.

15 A. Oh, or -- yes.

16 Q. And your salary remained the same after
17 becoming a senior sales associate, right?

18 A. Correct.

19 Q. But after becoming a senior sales associate,
20 your commission rate was 12-1/2 percent of net sales
21 generated during the previous month, rather than the
22 15 percent that you had previously been receiving,
23 right?

24 A. That's what this states, so I'm not quite
25 certain of the changes and, and how -- yeah, so based on

1 MR. DUKE: Q. So you were saying that there
2 was no discernible difference in job responsibilities
3 between sales associate and senior sales associate,
4 right?

5 A. To my knowledge. I don't recall any
6 differences between the two positions.

7 Q. But you understood the appointment to a senior
8 sales associate position from a sales associate position
9 to be a promotion; is that correct?

10 A. When I was given this title, it was just, it
11 wasn't really like the company made a real big deal
12 about being promoted as senior sales associate. I think
13 it was a letter sent to me with a change in my business
14 cards, and that was really the extent of the promotion.
15 I don't recall any significance in terms of status or
16 job responsibilities.

17 Q. After you became a senior sales associate, did
18 you continue to report to Mr. Chase?

19 A. Yes.

20 Q. And Mr. Chase remained a general manager at
21 that time?

22 A. Yes.

23 Q. After becoming a senior sales associate, did
24 you report directly to anybody else?

25 A. No.

1 Q. Did your job title subsequently change again?

2 A. Excuse me. I believe I was promoted again to
3 the regional manager position.

4 MR. DUKE: Mark this as Exhibit 20, please.

5 (Deposition Exhibit 20 was marked for
6 identification.)

7 THE WITNESS: Thank you.

8 MR. DUKE: Q. Do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. This is a promotion to regional manager for
12 the Bay Area territory.

13 Q. Now, I notice that it says "Accepted by," and
14 there's a signature blank for you to sign, but you did
15 not sign. Did you accept the promotion?

16 A. I accepted it, but I don't know why I did not
17 sign the form. I'm not sure what my reason behind that
18 was.

19 Q. Now, if you'll note the letter says that
20 you'll be promoted to regional manager beginning on
21 February 13th, 2006, and this letter is dated
22 March 24th, 2006. Do you know why the letter is dated
23 about six weeks after the date you were to become
24 regional manager?

25 A. I believe I was promoted directly from the

1 CEO, Mike Whitman, and he just wanted me to start right
2 away. And this letter was generated after the fact.

3 Q. So you, in fact, became regional manager on or
4 around February 13th, 2006?

5 A. I believe so.

6 Q. After becoming regional manager, you received
7 a raise from \$50,000 a year to \$75,000 a year, correct?

8 A. Correct.

9 Q. And you also became subject to a new
10 commission plan, correct?

11 A. Correct.

12 Q. And under this new commission plan, your
13 commissions would be based on regional sales, rather
14 than just your own individual sales, correct?

15 A. Correct. As a regional manager, I would not
16 be selling anything. I was managing a sales force. So
17 there was no direct commission that I would be able to
18 generate.

19 Q. So as regional manager, what were your job
20 responsibilities?

21 A. As regional manager, I was responsible to
22 manage the California sales reps, the reps in
23 California, essentially.

24 Q. And what did that consist of?

25 A. It essentially consisted of providing sales

1 you receive 5,000 shares?

2 A. At the time, I don't believe it really struck
3 a chord. I don't believe that that was something that I
4 was really concerned about at the time.

5 Q. Why not?

6 A. I just, it just was not something that I had
7 fixated on. I don't know. I just, I don't recall, at
8 least.

9 Q. Who did you report to after you became
10 regional manager?

11 A. I reported to the new vice-president of sales,
12 John Roache, who was newly hired at that time.

13 Q. So you no longer reported to Rob Chase; is
14 that right?

15 A. At that -- when the CEO had asked me to,
16 whether or not I would -- or let me back up. When the
17 CEO offered me the promotion to regional manager, he
18 gave me the decision to either fire Rob Chase or to keep
19 him on as a sales rep but give me the discretion to do
20 so.

21 Q. Did Mr. Whitman tell you why Rob Chase should
22 be fired?

23 A. He did not tell me specifically why I should
24 fire him. He, he more so suggested that I fire him and,
25 but left that decision to me.

1 associate position, right?

2 A. Correct.

3 Q. So you were regional manager for a little less
4 than two months?

5 A. I believe that's what it seems to be.

6 Q. What is your understanding as to why you went
7 from being a regional manager to being a sales associate
8 again?

9 A. To my best recollection, I believe there were
10 a lot of factors why I wanted to switch back to the
11 senior sales position.

12 Q. Did you request to be placed in a senior sales
13 associate position again?

14 A. I believe I did.

15 Q. Who did you make that request to?

16 A. To my knowledge, I believe I spoke with John
17 Roache.

18 Q. And you just testified that there were a
19 number of factors that led you to want to return to a
20 senior sales associate position. What were those
21 factors?

22 A. To my best recollection, one of the factors
23 was the fact that I was not really given a proper
24 training platform to manage, to the management position,
25 in my -- at least in my opinion. One of the other

1 A. I believe that John Roache, having seen how
2 uncomfortable I was with the management position, had
3 realized that I would have been better off in the sales
4 position, and I suggested to him to go back to the
5 senior sales associate position.

6 Q. And when you returned to the senior sales
7 associate role, your salary returned to \$50,000 per
8 year; is that correct?

9 A. I believe so.

10 Q. But this time your commission structure was
11 different than what it had been previously when you had
12 been a senior sales associate; is that correct?

13 A. Yes.

14 Q. What is your understanding as to why your
15 commission plan was different from what it was when you
16 previously were a senior sales associate?

17 A. The commission rates had changed based on
18 various factors outlined in the appointment letter.

19 Q. And those factors that are outlined in the
20 letter are that now there are different commission
21 percentages based on how much you exceed your quota; is
22 that correct?

23 A. Correct.

24 Q. And this is the first time that under the
25 commission plan you received different percentages,

1 commission percentages based on how much you exceeded
2 your quota; is that correct?

3 A. I believe so, but I'm not, I'm not certain. I
4 remember the compensation or the commission package was
5 changing, and so I don't know if, if it, this was the
6 most recent time it had changed or if there were changes
7 in the commission rate prior to this. I don't recall.

8 Q. Do you have an understanding as to why PMI
9 revised its commission plan to require quotas for higher
10 commission rates?

11 A. I believe that Power Medical Interventions
12 wanted to motivate the sales force to sell more.

13 Q. Did PMI apply, you know, the same or similar
14 commission plan to its entire sales force, as far as you
15 know, at this time?

16 A. I don't recall. Possibly.

17 Q. What was your quota?

18 A. I don't recall.

19 Q. Do you recall whether if, from the time that
20 you returned to the senior sales associate role until
21 your employment with PMI terminated, whether your quota
22 changed?

23 A. I, I don't know whether it changed or not. I
24 don't recall.

25 Q. After you returned to a senior sales associate

1 A. No, not to my knowledge.

2 Q. After you became, or rather, after you
3 returned to the senior sales associate position, who did
4 you report to?

5 A. I reported to Rob Chase.

6 Q. Did you continue to report to John Roache?

7 A. No.

8 Q. What was Rob Chase's job title after you
9 returned to the senior sales associate role?

10 A. Regional manager.

11 Q. So you and Mr. Chase switched jobs again?

12 A. Correct.

13 Q. After returning to the senior sales associate
14 position, did you report directly to anyone else other
15 than Mr. Chase?

16 A. No.

17 Q. After resuming your senior sales associate
18 position in 2006, in April 2006, what was your
19 understanding of your job performance?

20 A. Great.

21 Q. Did anyone express any concern about your
22 sales numbers?

23 A. No. Not to my knowledge.

24 Q. In approximately May of 2006, did you have a
25 conversation with Mr. Chase at an American Society of

1 Bariatric Surgeons meeting where you discussed problems
2 that you were having selling PMI's stapler product?

3 A. I don't recall the date, whether it was May or
4 later in the year, June, July, but I do recall having a
5 conversation with Rob Chase at the American Society of
6 Bariatric Surgery meeting.

7 Q. During this conversation, did you and
8 Mr. Chase discuss your sales performance?

9 A. I believe so.

10 Q. Tell me what Chase said and what you said in
11 this conversation.

12 A. I recall Rob asking me whether or not I would
13 be able to sell the products and make quota. And I told
14 him that I would not be able to sell the circular
15 stapling line any longer because of my concern with the
16 stapling line's effectiveness, and that he was concerned
17 whether I would be able to hit my number, or at least
18 obtain a certain amount of revenue for the months to
19 come. And I told him that I didn't feel that I would be
20 able to hit my number with the limited amount of
21 stapling product that I would have to sell in order to,
22 you know, compensate for the items that I would not be
23 able to sell. And I think I had mentioned something to
24 the effect of, that he -- I think he had said something
25 like, "I don't think, I don't think they would want to

1 hear what you're saying." And, "I don't think" -- or
2 something to the effect that, "They would not be happy
3 with, with what you're saying."

4 And I told him that, you know, that I just
5 couldn't sell the circular stapling product line, and if
6 that meant that I would be on -- that I may possibly be
7 terminated, then, you know, that's, that's their
8 prerogative. And he, he said, "Okay, well, that's what
9 I'll tell them." And that's the gist of the
10 conversation.

11 Q. So just to kind of go through that in a little
12 detail, break it down.

13 Mr. Chase told you that you needed to meet
14 your monthly quota, right?

15 A. I, I think he -- it wasn't really him saying
16 that I needed to meet my monthly quota, because we had
17 always had quotas, but whether we made the quota or not,
18 we were always striving to try to get some type of
19 revenue for that month. So whether we made the quota or
20 not, there was always some sort of effort to make or, or
21 reach a certain number. So he had suggested that I try
22 to make at least X amount of money, or revenue, for the
23 upcoming, excuse me, for the upcoming months.

24 Now, I don't believe that it was the quota
25 that he was asking me to hit, but the, a more manageable

1 number that may have been less than the actual quota.
2 And I think he said something like, you know, "You just
3 want to make sure that they have -- that, you know, they
4 are, you know, that you're making, you know, some sort
5 of progress in hitting your number."

6 Q. And in this conversation, you told Mr. Chase
7 that you were uncomfortable selling circular stapling
8 products, the PMI circular stapling product line?

9 A. Correct.

10 Q. What was the source of your discomfort with
11 PMI's circular stapling products?

12 A. I've had, at that point, various surgeons
13 through the course of my employment at Power Medical,
14 tell me that they have had issues, various different
15 types of issues with the circular stapler. Some, in
16 fact, have caused patient harm. And there were actually
17 some accounts that banned the Power Medical or
18 SurgAssist product line from their hospital because they
19 deemed it unsafe.

20 Q. Can you tell me all of the reports of products
21 with the SurgAssist product line that you received from
22 customers that you were calling on?

23 A. Could you rephrase that question?

24 Q. Sure. You just testified that you, that
25 surgeons had told you that there were problems with the

1 incident happen to him, where he had used the product
2 before I was hired; I asked whether or not he would give
3 it another chance. He used the circular stapler, had an
4 incident, and he vowed never to use the stapler again.

5 Q. Anyone else?

6 A. At this point, those are the surgeons that I
7 can recall at this point, but I, I'm sure there were
8 other surgeons that I just have not, that I just can't
9 remember at this point --

10 Q. When you --

11 A. -- that --

12 Q. Sorry.

13 A. Oh. I was just going to say that had similar
14 experiences with the stapler, where they either vowed
15 not to use the stapler again or had issues with the
16 stapler and whether or not it was safe to use.

17 Q. When you received these reports, what did you
18 do?

19 A. I believe I filled out an ICR report to
20 document most of these, at least I believe I documented
21 all of these reports, to the best of my knowledge, and
22 sent, if possible, sent the products back to the
23 corporate office for further evaluation.

24 MR. DUKE: Can we mark this as Exhibit 22.

25 (Deposition Exhibit 22 was marked for

1 identification.)
2 THE WITNESS: Thank you.
3 MR. DUKE: Q. Do you recognize these?
4 A. Yes.
5 Q. What are they?
6 A. These are ICR, or Initial Contact Reports.
7 Q. And these are the ICRs that you submitted
8 during the course of your employment with PMI?
9 A. I believe so.
10 Q. To whom at the company did you submit the
11 ICRs?
12 A. I don't recall their names. I think it was
13 Allyson Junod, Greg Jones, and Rob Chase. I'm not
14 certain if those names are correct. But --
15 Q. Sorry. Continue.
16 A. But I think, but I believe it was the QA
17 department that received the Initial Contact Reports.
18 Q. By QA, you mean quality assurance?
19 A. Correct.
20 Q. Who is Allyson Junod?
21 A. I think she was one of the quality assurance
22 persons that handled the ICR reports. I, I'm not sure
23 if that's her name. From what I recall.
24 Q. Who is Greg Jones?
25 A. Greg Jones, I believe, was in charge of QA at

1 A. So when I had the product or obtained the
2 product that was defective, I would package it in a
3 biohazard package and ship it to the, I believe it was
4 the quality assurance group. I, I don't recall who
5 actually received the product. But a group in PMI would
6 decontaminate the product. I believe she would, she
7 would have it sent to some of the engineers. From the
8 best of my recollection, the engineers would break the
9 product down and try to figure out what was wrong with
10 it.

11 Q. Other than through --

12 A. Then --

13 Q. I'm sorry.

14 A. I was just, then they would report those
15 defects to QA; QA would send me the response.

16 Q. Other than through ICRs, were there any other
17 ways that you notified the company of product problems?

18 A. Not to my knowledge. The ICR was really the
19 method of notifying the company of any suspect product.

20 Q. Did you ever relay any concerns about any of
21 PMI's product lines to Greg Jones other than through
22 ICRs?

23 A. I believe I may have had a couple of
24 conversations with Greg Jones. I vaguely remember
25 having spoken with him on one or two occasions.

1 Mr. Mintun?

2 A. I don't recall what year, whether it was, in
3 fact, 2005, but we did have conversations.

4 Q. Did you ever relay any concerns about any of
5 PMI's product lines to Michael Whitman?

6 A. Never. I --

7 Q. Who was Pat Holmes?

8 MR. MOSLEY: Well, he was in the middle of --
9 you have to let the witness answer the question.

10 MR. DUKE: I did. He answered the question.

11 MR. MOSLEY: He said "and," and then you
12 started your new question.

13 MR. DUKE: Because he answered the question.

14 MR. MOSLEY: You can answer the question.

15 MR. DUKE: No, no.

16 MR. MOSLEY: You can answer the question.

17 MR. DUKE: Excuse me. This is my deposition.

18 MR. MOSLEY: You can't cut him off. I'm not
19 going to let you cut him off or we're ending the
20 deposition now. You've cut him off in mid sentence, and
21 if you do that again, the deposition is over.

22 You get to answer that question.

23 MR. DUKE: No.

24 MR. MOSLEY: If you have more to say, you get
25 to answer it.

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1 call him to find out the most recent updates on what was
2 shipped that was defective and what was not.

3 Q. How about Maurice Pritchett; same type of
4 conversations as with Mr. Mehl and Mr. Connolly?

5 A. Similar, but not as much.

6 Q. Did you ever relay any concerns about any of
7 PMI's product lines to the FDA?

8 A. No.

9 Q. Did you ever relay any concerns about any of
10 PMI's product lines to any other government agency?

11 A. No, I was afraid of getting fired if I would
12 report anything to anyone outside the company.

13 Q. Did you ever relay any concerns about any of
14 PMI's product lines to anyone else, you know, other than
15 the people who you've testified already about?

16 A. I -- there were other sales reps that I may
17 have talked with that I don't remember. I'm sure that
18 I've spoken with many other people about, within the
19 organize -- within PMI about the issues. I don't
20 remember them off the top of my head, remember their
21 names off the top of my head. But I don't believe I had
22 spoken with anyone outside of PMI again for fear of
23 being fired.

24 Q. Isn't it true that you were responsible for
25 selling products other than PMI's circular stapling

1 Q. And you also testified that at least as a
2 formal matter, there's one quota that could be satisfied
3 by selling any combination of PMI products, correct?

4 A. Correct. And, however, if we did not sell the
5 circular stapler, then we were at a disadvantage because
6 that was the market; that was where we had the most
7 business.

8 Q. Do you believe that PMI cared one way or the
9 other where your sales came from, as long as you were
10 making sales?

11 A. I don't believe that Power Medical, PMI cared
12 whether we sold one line or the other.

13 Q. Now, going back to your conversation with Mr.,
14 Mr. Chase at the American Society of Bariatric Surgeons.

15 A. Can I just --

16 Q. Oh, certainly.

17 A. -- back up to that last question?

18 Can you . . .

19 MR. MOSLEY: Give us both the question and the
20 answer back.

21 (Record read by the reporter as follows:

22 Q. Do you believe that PMI cared one way
23 or the other where your sales came from,
24 as long as you were making sales?

25 A. I don't believe that Power Medical,

1 it shows. We'll move on.

2 At some point you got fired, right?

3 A. Yes.

4 Q. When did you get fired?

5 A. I don't recall the exact date.

6 Q. Did anyone tell you why you got fired?

7 A. Rob Chase had spoken with me when he got back
8 from his managers' meeting and told me that I was fired.
9 I don't recall if he explained specifically what had
10 happened at the managers' meeting, but he did tell me
11 that I was fired.

12 Q. Did Mr. Chase give you a reason for why you
13 were fired?

14 A. I believe that the reason, from the best of my
15 knowledge, was because I told him I did not want to --
16 that I could not, would not feel comfortable selling the
17 circular stapler any longer.

18 Q. And did Mr. Chase tell you that?

19 A. I don't recall him specifically stating that,
20 but I believe that that was the reason. I don't recall
21 him specifically stating that he had a conversation with
22 Mike Whitman explaining that, but I -- I don't
23 specifically recall what Rob Chase had said when he
24 fired me.

25 Q. Did anyone else tell you why your employment

1 A. Correct.

2 Q. After your employment terminated, you
3 submitted quite a few expense reports to Mr. Chase; is
4 that correct?

5 A. Correct.

6 MR. DUKE: This is going to be a bit of a
7 mess, and I apologize in advance.

8 Can you mark this as Exhibit 26.

9 (Deposition Exhibit 26 was marked for
10 identification.)

11 THE WITNESS: Thank you.

12 MR. DUKE: Q. Take your time to flip through
13 them first.

14 MR. MOSLEY: Well, there's a lot of them. You
15 want him to look through them all, or . . .

16 MR. DUKE: Well, just to familiarize.

17 MR. MOSLEY: The general nature of what they
18 are?

19 MR. DUKE: Exactly.

20 Q. Do you recognize all these pages --

21 A. Yes.

22 Q. -- in Exhibit 26?

23 What are they?

24 A. These are expense forms and receipts that I
25 had submitted.

1 A. Yes.

2 Q. Isn't it true that the University of
3 California at San Francisco Medical Center contacted you
4 while you were still employed by PMI because it wanted
5 to return some products that it had purchased?

6 A. UCSF did want to attempt to return some
7 product; however, I was in the process of working at
8 finding other options for them since there were a few
9 surgeons that still wanted to evaluate certain product
10 lines.

11 MR. DUKE: Can you mark this as Exhibit 29,
12 please.

13 (Deposition Exhibit 29 was marked for
14 identification.)

15 THE WITNESS: Thank you.

16 MR. DUKE: Q. Do you recognize this e-mail?

17 A. Yes.

18 Q. What is it?

19 A. This is an e-mail from the senior buyer at
20 UCSF Medical Center that states that the evaluation at
21 UCSF has ended and they would like to return the items
22 for full credit.

23 Q. So Brian Leonard is the, I believe you said,
24 senior buyer; is that right?

25 A. That was his title at this time.

1 Q. Did you respond to this e-mail?

2 A. I don't know whether I had spoken with him
3 live or if I had replied to his e-mail, but I had
4 responded to him in some form.

5 Q. What did you -- can you state the substance of
6 your response?

7 A. I don't recall the exact conversation because
8 I had many conversations with Brian along with, along
9 with other people within UCSF that had, or were a part
10 of the evaluation process, and all were within the
11 materials management department of UCSF that dealt with
12 products of this sort.

13 Q. Now, just to clarify, you testified, I
14 believe -- and correct me if I'm wrong -- that UCSF
15 wanted to return product but you wanted to try and
16 perhaps sell them an alternative product. Does that
17 capture . . . ?

18 A. No.

19 Q. When you were talking about the reimbursement
20 offset. If you could -- I guess I'm a little hazy
21 there.

22 A. I'm not sure.

23 Q. When, when you received this e-mail from
24 Mr. Leonard, why didn't you just process the return?

25 A. The reason I did not process the return --

1 there were probably -- I'm trying to recall exactly what
2 had happened. But to the best of my knowledge, there
3 probably were various reasons why I did not want to
4 process this return, one being UCSF is probably one of
5 the biggest accounts in Northern California. And in
6 order to get an evaluation, just an evaluation into this
7 account, it took over a year, or it can take up to a
8 year just to get your foot in the door. So when I was
9 able to bring the product in for evaluation, I wanted to
10 extend the evaluation and continue having the surgeons
11 try different product in order to have them keep the
12 system in there, keep the system in until we had other
13 products we can show them, since if they did remove the
14 product, it would have been a potential year-long wait
15 before we would have been able to evaluate any other
16 product that we may have come out with down the road.
17 So I tried to lobby the, or rally the support of various
18 surgeons at UCSF to request that we continue keeping the
19 SurgAssist product at UCSF. That was one of the main
20 reasons, from the best of my knowledge, that I wanted --
21 that I did not want to have the product returned.

22 Q. Are there any other reasons you did not want
23 to have the product returned?

24 A. It's actually kind of a -- actually, the first
25 reason was really the reason why I didn't want it

1 A. To the best of my knowledge, that was never
2 discussed. I don't think there was any, anything
3 clearly stated regarding whether or not I would be, or
4 what the consequences would be for having product
5 returned within 60 days, or if there were any
6 consequences at all. So I, I don't know what the return
7 policy was because I don't think it was ever clearly
8 stated.

9 Q. Returning to Miss Esposito's August 18th,
10 2006, letter to you, she indicated that after the
11 set-off that PMI was doing based on the UCSF return,
12 that this left \$2,937.68 in reimbursement remaining.
13 Did you receive a check from PMI for \$2,937.68?

14 A. I, I don't recall whether it was for the
15 specific amount. I, I'll have to check, you know, my
16 pay stubs. But from the best of my knowledge, I believe
17 this was sent to me after some time had passed.

18 Q. A check for the reimbursement amount, is that
19 what you mean, being sent to you after some time had
20 passed?

21 A. A check for the remaining expense
22 reimbursement in the amount of \$2,937.68 at some time
23 what may have been received to me, or it may have been
24 sent to me. Excuse me. I just, I don't recall. I
25 think it was sent to me after some time, but I

1 A. They are responses --

2 Q. During your employment with PMI -- I'm sorry?

3 A. I was just saying they are responses, but I do
4 not know what they, what those particular codes mean.

5 Q. During your employment with PMI, did you ever
6 tell anyone at PMI that it was violating 21 U.S.C.A.
7 351(a)?

8 A. No, I did not.

9 Q. During your employment with PMI did you ever
10 tell anyone at PMI that it was violating related FDA
11 regulations related to 21 U.S.C. 351(a), including 21
12 CFR 803 and 21 CFR 820, et seq.?

13 A. I do not understand these codes, so I did not
14 discuss these codes with anyone.

15 Q. In your answer to interrogatory number 6, you
16 say, "Defendant continued to demand that its salespeople
17 sell these dangerous, nonconforming products to
18 customers such as doctors and hospitals for use on
19 patients."

20 What does "nonconforming" mean?

21 A. My definition of "nonconforming", I'm not --
22 I'm not certain what "nonconforming" specifically means,
23 but that the product should not be used if it does not
24 work. That's . . .

25 Q. And answer to interrogatory number 6 also

EXHIBIT 3



110 Union Square Drive New Hope, PA 18938
Phone: 1-866-POWERMED
Fax: 267-775-8122

July 1, 2004

Myrick Tantiado
233 Winding Way
San Francisco, CA 94112

PERSONAL AND CONFIDENTIAL

Dear Myrick:

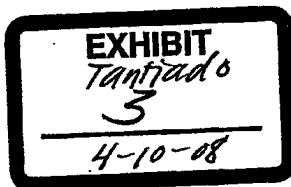
I am pleased to extend to you this offer of employment with Power Medical Interventions, Inc. as a Sales Associate for the San Francisco, CA territory, commencing on July 6, 2004. You will report to Rob Chase, General Manager.

Your responsibilities will include, but are not limited to, achieving annual revenue objectives, executing a regional sales plan, surgeon education and training and other assignments which are yet unanticipated but may become priorities as our business progresses.

You shall be paid on a salary basis at an annual rate of \$50,000, to be paid bi-weekly. As a regular, full-time employee you are eligible to participate in the employee benefit plans which PMI offers to its employees. These programs at present consist of life insurance, health and dental coverage, long-term and short-term disability coverage and 401(k). Your vacation will be earned and accrued on a monthly basis at .833 days per month, totaling ten days per year. Your medical and dental benefits will be effective August 1, 2004 and there is a six-month waiting period to join the 401(k) Plan. These plans may, from time to time, be amended or terminated with or without prior notice.

You will be eligible to participate in our monthly commission plan beginning immediately. The commission will be paid monthly at 15% of net sales, based on sales generated from the previous month. The Company reserves the right to periodically reassess the commission percentage. You will be reimbursed for all reasonable business expenses as outlined in the employee handbook. You will also be eligible for a \$3,000.00 draw against commission for the first three months of employment. As a member of the field sales selling organization you will also receive a monthly car allowance of \$600.00 to apply to car and insurance expenses.

Further, it is our intention after six months of employment to recommend to the Board of Directors that you be granted a non-qualified stock option. As a condition of employment, you understand you will forfeit any rights to these stock option awards should you voluntarily



PMI 000021

07/02/04 FRI 11:41 FAX 4157774325

S.F. TENNIS CLUB

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terminate employment with the company prior to your first anniversary date of your joining the company.

Your employment at all times will be at will, meaning that you are not being offered employment for a definite period and that either you or PMI may terminate the employment relationship at any time for any reason.

As a condition of your employment, you will be required to sign the attached Non-disclosure, Non-competition and Assignment of Inventions Agreement. In addition, the Immigration Reform and Control Act requires employers to verify employment eligibility and identity of new employees. On your first day of employment, you must provide us with appropriate documents to establish your eligibility to work in the United States (i.e. Social Security Card and Drivers' License, or U.S. Passport). We will not be able to employ you if you fail to comply with this requirement.

PMI maintains a smoke-free, drug-free workplace policy and supports equal employment opportunities for all of its employees.

In making this offer, PMI understands that you are not under any obligation to any former employer or any person, firm, or corporation which would prevent, limit, or impair in any way the performance by you of your duties as an employee of PMI.

This offer of employment is contingent upon the results of your background check and your employment may be terminated based on any false or negative information that may be revealed during this process.

Power Medical is an exciting and dynamic place to work. We are developing a product that will revolutionize the medical device field, and already have solid endorsements from both surgeons and the financial community. I look forward to you being a part of that excitement.

This offer will expire at 5:00 p.m. EST on July 2, 2004. Please indicate your acceptance of this offer by signing and returning this offer letter, the attached Non-disclosure, Non-competition and Assignment of Inventions Agreement, and the attached Employee Release form. Please return the documents to:

PMI
HR Dept.
110 Union Square Drive
New Hope, PA 18938

Myrick, we are looking forward to having you officially join the team!

Sincerely,

Rita Esposito
Human Resource Manager

Accepted:


Myrick Tantiado

Date 7/2/04

PMI 000022